IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.363 OF 2002

In

SUIT NO.364 OF 2002

Smt.D. Ponnammal : Plaintiff

V/s.

Smt.Ramadevi K. Rajagopal & Ors. : Defendants

...

Mr.Niranjan P. Shimpi for the plaintiff.

Ms Nipa Singh i/b. Mahesh Menon for defendant nos.1 & 2.

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CORAM : S.J.VAZIFDAR, J.

December 8, 2005.

P.C.

1. This Notice of Motion was disposed of by order dated 16.6.2003 by S.A.Bobde, J. By the said order, the learned Judge permitted the plaintiff to withdraw 1/3rd of the legal dues in respect of the deceased son, K.V. Rajagopal. Defendant nos.1 and 2 are the widow and minor daughter, respectively, of the deceased. The plaintiff is now almost 78 years old.

2. The said order dated 16.6.2003 furnished detailed reasons in support of the said order. The defendants

took out Notice of Motion no.2106 of 2003 for setting aside the said order. By order dated 12.8.2003, R.J. Kochar, J. (as His Lordship then was) set aside the ex parte order only on the ground that the defendants could not be heard. By the said order, it was observed that the order dated 16.6.2003 was eminently just, fair and proper, but the same ought to be set aside solely on the ground that the defendants were not heard.

3. The circumstances have not materially changed. In the circumstances, this Notice of Motion is disposed of in terms of the order dated 16.6.2003. The Notice of Motion is made absolute in terms of prayer clause (b). The plaintiff shall be entitled to receive the amount deposited with the Prothonotary & Senior Master provided she files an undertaking in this Court that she would bring back the amount, if so directed by this Court. The 1/3rd share of the legal dues of the deceased has been deposited in the Court. The balance 2/3rd has already been directly paid to the defendants.

4. All concerned to act on an authenticated copy of this order.

S.J. VAZIFDAR, J.